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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST LEE COX, Jr.,

Plaintiff,

v.

VASUKI DARAM, et al.,

Defendants.

No. 2:20-cv-1295 KJM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. §1983. Before the court are plaintiff’s second amended complaint for screening and request for a preliminary injunction. For the reasons set forth below, this court finds plaintiff has stated cognizable claims under the Eighth Amendment, under the Americans with Disabilities Act, and under the Rehabilitation Act. Defendants will be ordered to respond to both the second amended complaint and plaintiff’s renewed request for a preliminary injunction.

BACKGROUND

In an order filed November 16, 2020, this court found plaintiff’s first amended complaint stated claims for relief for violations of the Eighth Amendment, the Americans with Disabilities Act (“ADA”), and the Rehabilitation Act (“RA”) against defendants Daram, Bal, Williams, and Patterson. (ECF No. 19.) Plaintiff then moved to amend his first amended complaint.

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1 Defendants did not object to that motion and the court granted it. (See ECF No. 37.) Plaintiff
2 filed a second amended complaint on April 16, 2021. (ECF No. 38.)

3 **SCREENING**

4 As described in this court's prior screening order, the court is required to screen complaints
5 brought by prisoners to determine whether they sufficiently state claims under 42 U.S.C. § 1983.
6 28 U.S.C. § 1915A(a). The prisoner must plead an arguable legal and factual basis for each claim
7 in order to survive dismissal. Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). In
8 addition, the prisoner must demonstrate a link between the actions of each defendant and the
9 deprivation of his rights. Monell v. Dept. of Social Servs., 436 U.S. 658 (1978). "A person
10 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he
11 does an affirmative act, participates in another's affirmative acts or omits to perform an act which
12 he is legally required to do that causes the deprivation of which complaint is made." Johnson v.
13 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 **II. Analysis**

15 **A. Allegations of the Second Amended Complaint**

16 Plaintiff is an inmate at Mule Creek State Prison ("MCSP"). He identifies four defendants:
17 (1) Dr. Vasuki Daram; (2) I. Bal, Chief Medical Executive, MCSP; (3) M. Williams, Associate
18 Warden of Health Care, MCSP; and (4) T. Patterson, Chief Executive Officer, MCSP.

19 Plaintiff alleges that he suffers from the following serious medical conditions: (1) prostate
20 cancer, for which he is receiving chemotherapy; (2) hypertension, for which he is prescribed
21 medication; and (3) sleep apnea, for which he is prescribed a continuous positive airway pressure
22 ("CPAP") machine. Plaintiff alleges that the first two conditions, and their treatments, render him
23 immunocompromised and that all three conditions put him at greater risk for serious
24 complications if he contracts COVID-19. He further alleges that all three conditions qualify as
25 disabilities under the ADA and the RA.

26 Plaintiff alleges that in the Spring of 2020, MCSP officials determined that the use of CPAP
27 machines could contribute to the spread of the COVID-19 virus. A couple days later, the MCSP
28 warden issued a statement that inmates who require CPAP machines would be moved to single

1 cells so that they could continue to use them. Plaintiff contends defendants Bal, Williams, and
2 Patterson are responsible for the deprivation of his CPAP machine and for a policy restricting
3 CPAP use, and thus single cells, to inmates with congenital heart defects. Plaintiff further alleges
4 that when he requested a single cell so that he could continue to use his CPAP machine,
5 defendant Daram denied that request.

6 Plaintiff also alleges that defendants Bal, Williams, and Patterson were responsible for a
7 policy at MCSP of housing inmates who had tested positive for COVID-19 with inmates who had
8 tested negative, including plaintiff. Plaintiff contends defendants Bal, Williams, and Patterson
9 were aware he is immunocompromised and therefore vulnerable to contracting COVID-19.
10 Plaintiff further alleges that defendant Daram refused to order that plaintiff be single-celled even
11 though she was aware of his immunocompromised status.

12 Plaintiff contends that as a result of the loss of the CPAP machine, he has breathing
13 difficulties and does not sleep “normally.” In January 2021, plaintiff contracted COVID-19 and
14 for a month suffered “difficulty breathing, pain from headaches, a runny nose, loss of strength,
15 powerful sneezing, coughing, memory and concentration loss.”

16 Plaintiff seeks a preliminary injunction requiring defendants to allow him to use a CPAP
17 machine. He also seeks compensatory and punitive damages

18 **B. Does Plaintiff State Cognizable Claims for Relief?**

19 This court again finds that plaintiff has stated cognizable claims under the Eighth Amendment
20 that defendants have been deliberately indifferent to his serious medical needs by refusing to
21 permit him to use his CPAP machine and by housing him with inmates who tested positive for
22 COVID-19. See Farmer v. Brennan, 511 U.S. 825, 834 (1994). In addition, plaintiff has again
23 stated cognizable claims against all defendants under the ADA and RA. See McGary v. City of
24 Portland, 386 F.3d 1259, 1265 (9th Cir. 2004). This court will order defendants to respond to the
25 second amended complaint.

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1 For the foregoing reasons, IT IS HEREBY ORDERED that within thirty days of the filed
2 date of this order, defendants shall file an answer or other responsive pleading to the second
3 amended complaint. That pleading shall include a response to plaintiff's request for a preliminary
4 injunction.

5 Dated: April 29, 2021

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9 DEBORAH BARNES
10 UNITED STATES MAGISTRATE JUDGE
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